Supreme Court, U.S.
FILED
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# In the Supreme Court of the United States

OCTOBER TERM, 1971

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## No. 71-724

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MARTIN SKLAROFF,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent.*

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## SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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MIAMI REVIEW — 371-4653 — 377-3721

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In accordance with Rule 24(5) of the Rules of Practice of the United States Supreme Court, the Petitioner, MARTIN SKLAROFF, filed this Supplemental Brief respectfully directing the Court's attention to the following cases:

In *Hill v. Philpott*, 445 F.2d. 444 (7th Cir., 1971), cert. denied 40 LW 3279 (Dec. 14, 1971), and in *United States v. Blank*, 330 F.Supp. 783 (N.D.Ohio, 1971), the Courts ruled that evidence seized pursuant to a valid search warrant and thus admissible under the Fourth Amendment was nonetheless inadmissible on the basis of the Fifth Amendment's privilege against self-incrimination.

*Hill v. Philpott, supra*, held that where the production of a taxpayers personal books and records could not be compelled by subpoena or summons on the basis of the Fifth Amendment privilege against self-incrimination, the fact that they were seized pursuant to a valid search warrant did not preclude the taxpayer from claiming violation of his Fifth Amendment rights and thus the material seized under the warrant would be inadmissible. In *Hill v. Philpott, supra*, the evidence in question consisted of personal books and records evidencing a violation of the tax laws. In *United States v. Blank, supra*, the court relied on the decision in *Hill v. Philpott, supra*, and held that in view of *Marchetti v. United States*, 390 U.S. 39 (1968) and *Grosso v. United States*, 390 U.S. 62 (1968), *records of alleged bookmaking activities*, which were per se self-incriminatory and which were validly seized pursuant to a search warrant could not be used against a defendant who asserted his personal claim of privilege against self-incrimination under the Fifth Amendment.

The Petitioner submits that the above cases are of substantial importance to the determination of the issues in the instant case. It is the Petitioner's contention that even if the evidence obtained herein was obtained by a valid

warrant it nonetheless is evidence which violated his Fifth Amendment rights against self-incrimination and as such should not have been admitted against him at trial.

It is therefore respectfully submitted that in view of the reasons set forth in the Petitioner's Petition for a Writ of Certiorari, and the cases cited herein, a Writ of Certiorari should issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December, 1971, a copy of the above Supplemental Brief in Support of Petition for Writ of Certiorari was mailed, postage prepaid, to the Solicitor General of the United States, Department of Justice, Washington, D.C. and to Robert W. Rust, Office of the United States Attorney, Miami, Florida.

I FURTHER CERTIFY that all parties required to be served have been served.

JAMES J. HOGAN